

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1477 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 tobacco.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 7.1-6-2-4 IS AMENDED TO READ AS
- 7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) An enforcement
- 8 officer vested with full police powers and duties may engage a person
- 9 less than ~~eighteen (18)~~ **twenty-one (21)** years of age as part of an
- 10 enforcement action under this article if the initial or contemporaneous
- 11 receipt or purchase of a tobacco product by a person less than ~~eighteen~~
- 12 ~~(18)~~ **twenty-one (21)** years of age occurs under the direction of an
- 13 enforcement officer vested with full police powers and duties and is
- 14 part of the enforcement action.
- 15 (b) An enforcement officer vested with full police powers and duties
- 16 shall not:
- 17 (1) recruit or attempt to recruit a person less than ~~eighteen (18)~~
- 18 **twenty-one (21)** years of age to participate in an enforcement
- 19 action under subsection (a) at the scene of a violation of section
- 20 2 of this chapter; or
- 21 (2) allow a person less than ~~eighteen (18)~~ **twenty-one (21)** years
- 22 of age to purchase or receive a tobacco product as part of an
- 23 enforcement action under subsection (a) without the written
- 24 permission of the person's parents or legal guardians.

SECTION 2. IC 24-3-5-5, AS AMENDED BY P.L.160-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. (a) A merchant who mails or ships cigarettes as part of a delivery sale shall:

(1) use a mailing or shipping service that requires the customer or a person ~~at least eighteen (18) years of age who is~~ designated by the customer, **both of whom must be at least twenty-one (21) years of age**, to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or an identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the delivery agent or employee of the mailing or shipping service, appears to be less than twenty-seven (27) years of age;

(2) provide to the mailing or shipping service used under subdivision (1) proof of compliance with section 6(a) of this chapter; and

(3) include the following statement in bold type or capital letters on an invoice or shipping document:

INDIANA LAW PROHIBITS THE MAILING OR SHIPPING OF CIGARETTES TO A PERSON LESS THAN ~~EIGHTEEN (18)~~ **TWENTY-ONE (21)** YEARS OF AGE AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES.

(b) The commission may impose a civil penalty of not more than one thousand dollars (\$1,000) if a mailing or shipping service:

(1) delivers cigarettes as part of a delivery sale without first receiving proof from the merchant of compliance with section 6(a) of this chapter; or

(2) fails to obtain a signature and proof of identification of the customer or the customer's designee under subsection (a)(1).

The commission shall deposit amounts collected under this subsection into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

(c) The following apply to a merchant that mails or ships cigarettes as part of a delivery sale without using a third party service as required by subsection (a)(1):

(1) The merchant shall require the customer or a person ~~at least eighteen (18) years of age who is~~ designated by the customer, **both of whom must be at least twenty-one (21) years of age**, to:

(A) sign to accept delivery of the cigarettes; and

(B) present a valid operator's license issued under IC 9-24-3 or identification card issued under IC 9-24-16 if the customer or the customer's designee, in the opinion of the merchant or the merchant's employee making the delivery, appears to be less than twenty-seven (27) years of age.

(2) The commission may impose a civil penalty of not more than

one thousand dollars (\$1,000) if the merchant:

(A) delivers the cigarettes without first complying with section 6(a) of this chapter; or

(B) fails to obtain a signature and proof of identification of the customer or the customer's designee under subdivision (1).

The commission shall deposit amounts collected under this subdivision into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

**(d) This section does not apply to a customer or a person designated by the customer who is at least eighteen (18) years of age on June 30, 2007. This subsection expires December 31, 2010.**

SECTION 3. IC 24-3-5-8, AS AMENDED BY P.L.160-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. **(a)** The commission may impose a civil penalty of not more one thousand dollars (\$1,000) on a:

(1) customer who signs another person's name to a statement required under section 4(1) of this chapter; or

(2) merchant who sells cigarettes by delivery sale to a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age.

The commission shall deposit amounts collected under this section into the youth tobacco education and enforcement fund established by IC 7.1-6-2-6.

**(b) Subsection (a)(2) does not apply to a person who purchases cigarettes and is at least eighteen (18) years of age on June 30, 2007. This subsection expires December 31, 2010.**

SECTION 4. IC 35-46-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) A person who knowingly:

(1) sells or distributes tobacco to a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age; or

(2) purchases tobacco for delivery to another person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age;

commits a Class C infraction. For a sale to take place under this section, the buyer must pay the seller for the tobacco product.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a person accused of selling or distributing tobacco to a person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph, showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused person sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than ~~eighteen (18)~~ **twenty-one (21)** years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding ~~IC 34-28-5-4(c)~~, **IC 34-28-5-5(c)**, civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

**(h) This section does not apply to an individual who purchases tobacco and is at least eighteen (18) years of age on June 30, 2007. This subsection expires December 31, 2010.**

SECTION 5. IC 35-46-1-10.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than ~~eighteen (18)~~ **twenty-one (21)** years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

- (1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).
- (2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).
- (3) If the retail establishment at that specific business location has had two (2) citations or summonses issued for a violation of this

section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A retail establishment may not be issued a citation or summons for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than ~~eighteen (18)~~ **twenty-one (21)** years of age:

(1) The buyer or recipient produced a driver's license bearing the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or the federal government showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than ~~eighteen (18)~~ **twenty-one (21)** years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-5(c), civil penalties collected under this section must be deposited in the Richard D. Doyle youth tobacco education and enforcement fund (IC 7.1-6-2-6).

(h) A person who violates subsection (a) at least six (6) times in any

1 six (6) month period commits habitual illegal sale of tobacco, a Class  
2 B infraction.

3 **(i) This section does not apply to an individual who purchases or**  
4 **receives tobacco and is at least eighteen (18) years of age on June**  
5 **30, 2007. This subsection expires December 31, 2010.**

6 SECTION 6. IC 35-46-1-10.5 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10.5. (a) A person less  
8 than ~~eighteen (18)~~ **twenty-one (21)** years of age who:

- 9 (1) purchases tobacco;
- 10 (2) accepts tobacco for personal use; or
- 11 (3) possesses tobacco on his person;

12 commits a Class C infraction.

13 (b) It is a defense under subsection (a) that the accused person acted  
14 in the ordinary course of employment in a business concerning tobacco:

- 15 (1) agriculture;
- 16 (2) processing;
- 17 (3) transporting;
- 18 (4) wholesaling; or
- 19 (5) retailing.

20 **(c) This section does not apply to a person who is at least**  
21 **eighteen (18) years of age on June 30, 2007. This subsection expires**  
22 **December 31, 2010.**

23 SECTION 7. IC 35-46-1-11.7 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 11.7. (a) A retail  
25 establishment that has as its primary purpose the sale of tobacco  
26 products may not allow an individual who is less than ~~eighteen (18)~~  
27 **twenty-one (21)** years of age to enter the retail establishment.

28 (b) An individual who is less than ~~eighteen (18)~~ **twenty-one (21)**  
29 years of age may not enter a retail establishment described in  
30 subsection (a).

31 (c) A retail establishment described in subsection (a) must  
32 conspicuously post on all entrances to the retail establishment a sign in  
33 boldface type that states "NOTICE: It is unlawful for a person less than  
34 ~~18~~ **21** years old to enter this store."

35 (d) A person who violates this section commits a Class C infraction.  
36 Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction  
37 committed under this section must be imposed as follows:

- 38 (1) If the person has not been cited for a violation of this section  
39 in the previous ninety (90) days, a civil penalty of fifty dollars  
40 (\$50).
- 41 (2) If the person has had one (1) violation in the previous ninety  
42 (90) days, a civil penalty of one hundred dollars (\$100).
- 43 (3) If the person has had two (2) violations in the previous ninety  
44 (90) days, a civil penalty of two hundred fifty dollars (\$250).
- 45 (4) If the person has had three (3) or more violations in the  
46 previous ninety (90) days, a civil penalty of five hundred dollars

- 1 (\$500).  
2 A person may not be cited more than once every twenty-four (24)  
3 hours.  
4 (e) Notwithstanding IC 34-28-5-5(c), civil penalties collected under  
5 this section must be deposited in the Richard D. Doyle youth tobacco  
6 education and enforcement fund established under IC 7.1-6-2-6.  
7 **(f) This section does not apply to an individual who enters a**  
8 **retail establishment and is at least eighteen (18) years of age on**  
9 **June 30, 2007. This subsection expires December 31, 2010."**  
10 Renumber all SECTIONS consecutively.  
(Reference is to HB 1477 as printed February 14, 2007.)

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Representative Thompson